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11
12 **IN THE UNITED STATES DISTRICT COURT**
13
14 **IN AND FOR THE DISTRICT OF ARIZONA**
15

16 Johnny Wheatcroft and Anya Chapman, as
17 husband and wife, and on behalf of minors J.
18 W. and B. W.,

19 Plaintiffs,

20 v.

21 City of Glendale, a municipal entity; Matt
22 Schneider, in his official and individual
23 capacities; Mark Lindsey, in his official and
24 individual capacities; and Michael Fernandez,
25 in his official and individual capacities;

26 Defendants.

Case No.: 2:18-cv-02347-SMB

**PLAINTIFFS' REPLY IN SUPPORT
OF THEIR MOTION REGARDING
THE CONFLICT OF INTEREST
AMONG DEFENDANTS**

Plaintiff Johnny Wheatcroft, individually, and on behalf of minors J.W. and B.W. (collectively, "Plaintiffs"), respectfully submit this reply to the motion seeking the Court's assistance in connection with conflicts of interest among the Defendants which are represented by the same counsel.

ARGUMENT

Contrary to Defendants' position, Plaintiffs are not moving to disqualify defense counsel in this matter at this time. However, if the individual Defendants are not afforded separate counsel

1 for purposes of settlement discussions, defense counsel will be put into a position that creates a
2 non-waivable conflict that would result in disqualification as to all Defendants, which would
3 likely result in a delay in this matter.

4 With the approaching deadline for settlement talks, Plaintiffs are seeking the Court's
5 guidance and assistance given the nature of non-waivable conflicts that would exist if defense
6 counsel is exposed to positions that would materially limit his ability to advise, recommend, or
7 carry out an action for one client that may not be in the best interest of another client. Such
8 exposure would subject defense counsel to a complete disqualification as to all Defendants, which
9 would likely cause a delay in this matter.

10 Plaintiffs have made numerous attempts to try to resolve this matter since July of 2018, but
11 with absolutely no reciprocal efforts by the Defendants in any manner whatsoever. The deadline
12 for settlement talks in this case is March 26, 2021, and the parties are scheduled to engage in
13 settlement talks on March 24, 2021. To avoid futility of informal settlement discussions, separate
14 counsel for the individuals would assist in settlement talks and likely result in resolution of some,
15 if not all, of the claims in this matter.

16 The individual Defendants have personal exposure in this matter, especially given that they
17 are represented under a reservation of rights and subject to an adverse award for punitive damages.
18 Defendant Glendale is not subject to punitive damages and, therefore, it does not have personal
19 exposure to a punitive damage award. Further, Defendant Glendale is self-insured up to a certain
20 amount, and it is covered by insurance without any reservation of rights.

21 Defendant Schneider is under investigation by Arizona and Federal agencies, which may
22 result in criminal charges for which Plaintiffs would be allowed to assert rights as victims. Under
23 Arizona law, a governmental entity is not vicariously liable for certain criminal acts of its
24 employees. Thus, Defendant Glendale may benefit from a criminal conviction of Defendant
25 Schneider. Further, as victims in any potential criminal proceedings, Plaintiffs would be able to
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1 RESPECTFULLY SUBMITTED this 17th day of March, 2021.

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3 ATTORNEYS FOR FREEDOM

4 By: /s/ Jody L. Broaddus

5 Jody L. Broaddus, Esq.

6 Marc J. Victor, Esq.

7 *Attorneys for Plaintiffs*

8 **CERTIFICATE OF SERVICE**

9 I hereby certify that on this 17th day of March, 2021, I electronically transmitted the
10 foregoing to the Clerk's office using the CM/ECF system for filing and transmittal of a Notice of
11 Electronic filing to the following registrants to:

12 Joseph J. Popolizio

13 Ian C. Beck

14 JONES, SKELTON & HOCHULI, P.L.C.

15 40 North Central Avenue, Suite 2700

16 Phoenix, Arizona 85004

17 By: /s/Heather Wilson

18 Heather Wilson
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